

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000 - 578

August 2, 2000

ESS.COM, L.L.C.
Petition for Finding of Public
Convenience and Necessity to
Provide Service as a Switchless
Reseller Interexchange Telephone
Utility

ORDER GRANTING AUTHORITY
TO PROVIDE INTEREXCHANGE
RESALE SERVICE AND
APPROVING SCHEDULE OF
RATES AND TERMS AND
CONDITIONS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, the Commission grants ESS.COM, L.L.C. the authority to provide switchless resale interexchange service throughout the State of Maine and approves the Company's Terms and Conditions and Rate Schedules as filed on July 5, 2000. Pursuant to Chapter 280, §§ 11 and 12, we exempt ESS.COM, L.L.C. from the requirements of Chapter 210, *Uniform System of Accounts*, and 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On July 3, 2000, ESS.COM, L.L.C. applied for authority to operate in Maine pursuant to 35-A M.R.S.A. §§ 2102 and 2105. 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to serve where a utility is already authorized or is providing the same or similar service, before we grant approval under section 2102 for an additional public utility to provide service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting ESS.COM, L.L.C. the authority to provide interexchange service will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b). ESS.COM, L.L.C.'s application provides reasonable

information indicating that its financial and management capabilities are adequate to provide interexchange services in Maine.

II. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

We allow the terms and conditions filed by ESS.COM, L.L.C. to go into effect. ESS.COM, L.L.C. used the Commission's expedited process for approval. That process includes standard terms and conditions that comply with Maine law and the Commission's Rules. We have reviewed the Company's terms and conditions and find that they appear to comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in ESS.COM, L.L.C.'s terms and conditions and the Commission's Rules or a statute, the rule or statute will govern.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of ESS.COM, L.L.C.'s services and rates in the market provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by ESS.COM, L.L.C. to go into effect. We believe, however, that customers must have complete information about the price of services provided. Therefore, we require that when an aggregator surcharge is added to the price of a call, ESS.COM, L.L.C. must fully disclose the presence and amount of that surcharge prior to the customer's use of ESS.COM, L.L.C.'s service.

III. WAIVER OF PAYMENT OF ACCESS CHARGES

Our approval of ESS.COM, L.L.C.'s application to provide interexchange service in Maine is conditioned on the payment of access charges to the affected local exchange carriers who originate and terminate the traffic. Because the Commission's Chapter 280 requires that *each* interexchange carrier pay applicable access charges, the chapter ordinarily requires both an underlying carrier and a switchless reseller¹ to pay access charges for the same call. Switchless resellers may avoid double payment of access by asking the Commission to waive certain sections of Chapter 280.

The Commission has determined that ESS.COM, L.L.C. is a switchless reseller. Using the Commission's standard Waiver Request Form, the Company has asked the Commission to waive the requirement of Chapter 280 that requires it to pay access charges, subject to the conditions and requirements described on the Waiver Request Form. We find that the granting of the waiver upon those conditions is reasonable and grant the waiver subject to the stated conditions. ESS.COM, L.L.C. has stated that Sprint will be its underlying carrier from which it purchases services that it resells. Sprint is authorized by the Commission to provide intrastate interexchange service.

¹For purposes of applying the access charge waiver, we define switchless resellers as entities that do not own, lease, or control any switching facilities, or private lines, that they will use to provide telecommunication services in Maine. A reseller who owns a switch in another state, and plans to use that switch to switch or carry Maine traffic, is a switched reseller. A reseller who does not own facilities in Maine or any other state, or who owns facilities in another state but does not plan to use that switch to carry Maine traffic, is a switchless reseller.

ESS.COM, L.L.C. shall immediately inform the Commission and each Access Provider in the State of Maine if there is any change in its operations that will result in its carrying or switching any of its own traffic. In addition, ESS.COM, L.L.C. shall notify the Commission if it changes its underlying carrier, within 10 days

IV. WAIVERS; REPORTING REQUIREMENTS

Pursuant to sections 11(A) and 12(A) of Chapter 280, ESS.COM, L.L.C. is exempt from Chapter 210 of the Commission's Rules, which governs telephone utility accounting and annual financial reports, and from 35-A M.R.S.A. §§ 707 and 708, which governs approvals for reorganizations and contracts with affiliated interests. However, as required by Chapter 280, § 11(A), ESS.COM, L.L.C. must report its annual intrastate gross operating revenues and its annual intrastate minutes of use for the purpose of determining its regulatory assessment.² Pursuant to Chapter 280, § 11(B), ESS.COM, L.L.C.

shall maintain records sufficient to identify and to allow auditing of traffic volumes, intrastate interexchange billings for both retail and wholesale services, and all information that is necessary to calculate access or interconnection charges in accordance with this Chapter. Those records shall be maintained for a minimum of 2 calendar years.

Pursuant to Chapter 280, § 12, the exemption from the affiliated interest approval requirements of 35-A M.R.S.A. §§ 707 and 708 is subject to the notice requirements contained in Chapter 280, § 12(B) and (C) and in the ordering paragraphs below.

V. OTHER REQUIREMENTS

ESS.COM, L.L.C. shall comply with all applicable rules of the Commission and statutes of the State of Maine, including the customer notification rule described in Ordering Paragraph 6.

VI. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of ESS.COM, L.L.C. to provide interexchange service throughout the State of Maine;
2. Approve ESS.COM, L.L.C.'s proposed Terms and Conditions and Rate Schedules; those Schedules shall be effective on August 2, 2000;
3. Grant ESS.COM, L.L.C.'s Request for Waiver of the requirement under certain sections of Chapter 280 that it pay access charges subject to the conditions and requirements stated on the attached Waiver Request Form. ESS.COM, L.L.C. shall

²The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

immediately inform the Commission and the Access Administrator if there is any change in its operations that will result in its carrying, switching, or any processing of any of its own traffic. ESS.COM, L.L.C. shall notify the Commission of any change in its underlying carrier within 10 days following the change;

4. Exempt ESS.COM, L.L.C. from the requirements of Chapter 210 of the Commission's Rules, except that it must report certain revenue and minutes of use information, as required by Chapter 280, § 11(A), on or before April 1 of each year;

5. Exempt ESS.COM, L.L.C. from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, but ESS.COM, L.L.C. shall provide notice to the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of ESS.COM, L.L.C. or of any entity that owns more than 50% of ESS.COM, L.L.C. The notice required by this subsection shall be filed within 10 days following any reorganization described herein, as required by Chapter 280, § 12(B). As required by Chapter 280, § 12(C), ESS.COM, L.L.C. shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and change of its contact person. ESS.COM, L.L.C. shall provide the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, ESS.COM, L.L.C. shall amend its rate schedules and terms and conditions to reflect any change in identity; and

6. Direct that ESS.COM, L.L.C. shall comply with all applicable rules of the Commission, including the requirement in Chapter 280, § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20%.

Dated at Augusta, Maine this 2nd day of August, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR:

Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to

review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.